

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-193914

DATE: February 5, 1979

MATTER OF: Decilog, Inc. DLG 00810

[Protest Concerning Late Proposal Rejection]

DIGEST:

1. Protester's late proposal properly rejected even though Postal Service guaranteed delivery before date set for receipt of proposal, in absence of showing that proposal was mishandled by procuring agency after its receipt.
2. Where protester's initial submission shows protest without legal merit, GAO will render decision without agency report.

Decilog, Inc. (Decilog), protests the rejection of its proposal by the Naval Regional Procurement Office, Long Beach, California, under Request for Proposal (RFP) No. N00123-79-R-0422, and the award of contract without consideration of Decilog's proposal. The proposal was rejected for lateness.

According to the protester, the date and time set for receipt of proposals was 3:00 P.M. on December 21, 1978; it further states that the proposal was sent at 1:55 P.M. on December 20, 1978, by the United States Postal Service Express Mail Service, which guaranteed delivery before the above deadline, but because of the failure of performance by the Postal Service the proposal was not received until 9:45 A.M., December 22, 1978.

Decilog states that consideration of the proposals could not have progressed very far in the time between the 3:00 P.M. closing time on December 21, 1978, and receipt of the proposal the following day at 9:45 A.M. Decilog alleges that the proposal was timely in relation to the commencement of performance scheduled for April 12, 1979, that by mailing the proposal in advance of the required due date Decilog received no special advantage, and that rejection of its proposal would unnecessarily limit competition.

The fact that Decilog's proposal was sent by express mail and delivery was guaranteed, did not remove from Decilog its obligation to assure timely arrival of its proposal.

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Defense Acquisition Regulation § 7-2002.4(a) reads in pertinent part:

"(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made; and

(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);

(ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(iii) it is the only proposal received."

Late receipt of an offer will result in rejection unless the specific conditions of the regulation are met. We have held that mishandling by a Government agency refers to mishandling after receipt of the offer in the agency's local office. The Hoedads, B-185919, July 8, 1976, 76-2 CPD 21. Thus, a failure on the part of the Postal Service does not constitute mishandling at a Government installation. Kessel Kitchen Equipment Co., Inc., B-189447, October 5, 1977, 77-2 CPD 271; see also Robert Yarnall Richie Productions, B-192261, September 18, 1978, 78-2 CPD 207.

It is clear that the proposal was sent one day prior to the date specified for receipt, and there is no allegation that Decilog's was the only proposal received.

In view of the above, rejection of the late proposal was proper.

Where it is clear from a protester's initial submission that the protest is without legal merit, we will decide the matter without requesting a report from the procuring activity pursuant to our Bid Protest Procedures, 4 C.F.R. Part 20 (1977). Hot Lake Development Inc.; Vale Geothermal Inc., B-192512, August 18, 1978, 78-2 CPD 135.

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The protest is summarily denied.


Deputy Comptroller General
of the United States